UNITED NATIONS

CERD

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1521
12 April 2002

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixtieth session

SUMMARY RECORD OF THE 1521st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 March 2002, at 3 p.m.

Chairman: Mr. PILLAI
(Vice-Chairman)

later: Mr. DIACONU
(Chairman)

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GE.02-40922 (E) 100402 150402

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In the absence of Mr. Diaconu, Mr. Pillai, Vice-Chairman, took the Chair.

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Draft concluding observations concerning the sixteenth periodic report of Costa Rica (continued) (CERD/C/60/Misc.37/Rev.3)

Paragraph 12

1. Mr. HERNDL proposed that the word "regret" should be replaced by "notes".

2. Mr. RESHETOV noted that the term "full autonomy" was ambiguous and could be construed as having the meaning of independence.

3. Mr. ABOUL-NASR said that he did not see a problem with the use of the term "full autonomy". Some indigenous peoples had been confined to reservations. It should be made clear, first, that the Committee was not asking that they should be given autonomy which was limited geographically and, secondly, that their autonomy and rights should be equal to those recognized for other citizens.

4. Mr. SHAHI said that, in the context of indigenous peoples' rights, full autonomy would mean complete self-rule, if not independence. It was not clear in the present case whether the peoples in question were concentrated in certain territories or scattered. The Committee could, of course, use the word employed by the State party, but the extent of the autonomy should be specified.

5. Mr. THORNBERRY said that "full autonomy" did not mean independence. In the context of international law and human rights law, the term corresponded to a measure of self-control and self-administration which would be as complete as possible within the confines of the existing State.

6. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) pointed out that the State party had used the term "full autonomy" in its own report. It was clear that the Government's intention was not to recognize the independence of such groups, but to ensure that their rights and autonomy would be upheld within their territories.

7. Mr. AMIR said that the current wording of paragraph 12 was ambiguous and that "full autonomy" could indeed be understood to mean independence. The term's interpretation could vary widely between Government representatives and indigenous peoples. The assertion of full autonomy could be invoked as an argument for recognition of the inalienable right to independence, for example, in the Trusteeship Council.

8. Mr. ABOUL-NASR said that, to his knowledge, there was no basis in the Charter of the United Nations for the Trusteeship Council to recognize such a right on the basis of an assertion of full autonomy. If the State party itself used the term, he failed to see why the Committee should hesitate to use it.

9. Mr. THORNBERRY said that the use of the word "reactivate" in the second part of paragraph 12 was problematic. It was his understanding that the previous bill had been shelved and was not to be taken up again. A new bill was being introduced, similar in content.

10. Mr. KJAERUM proposed that the words "hopes that through this project the draft Act will be reactivated" should be deleted from the second sentence.

11. Mr. SHAHI supported the amendment proposed by Mr. Kjaerum.

12. The CHAIRMAN said he took it that there were no objections to the amendments proposed by Mr. Herndl and Mr. Kjaerum.

13. Paragraph 12, as amended and subject to minor drafting changes, was adopted.

Paragraph 13

14. Mr. THORNBERRY requested clarification as to the meaning of the phrase "failure on the part of the authorities to maintain communication with the indigenous population".

15. Mr. SHAHI said that there was an apparent contradiction between paragraph 13, which pointed to the Government's failure to communicate and to provide specific plans for indigenous peoples, and paragraph 12, which referred to the new bill.

16. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) pointed out that paragraphs 204 and 205 of the report of the State party itself pointed to such shortcomings.

17. Paragraph 13 was adopted.

Paragraph 13 bis

18. The CHAIRMAN asked the Country Rapporteur to read out a paragraph submitted by Mr. Aboul-Nasr for inclusion as paragraph 13 bis.

19. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) said that the new paragraph would read as follows: "The Committee regrets the lack of apology by the Government of Costa Rica for past errors committed against the indigenous population and the lack of information on reparations or compensation that have been given to that population and to the Afro-Costa Rican population for such errors."

20. Mr. BOSSUYT said that he was dissatisfied with the wording. In a previous section of the concluding observations, the Committee had quite rightly welcomed the fact that the Government had issued an apology. Instead of using the word "regrets", perhaps it would be more constructive if the Committee appealed to the Government to extend the scope of that apology to include the indigenous populations as well.

21. Mr. Diaconu took the Chair.

22. Mr. THORNBERRY supported the wording proposed by Mr. Bossuyt.

23. Mr. KJAERUM said that, while he supported the text, he had some doubts as to whether it was appropriate to raise the question of reparations and compensation. Had the Committee raised those issues in previous concluding observations?

24. Mr. LINDGREN ALVES said that the Committee had already invited the State party to pay due attention to the rights of indigenous peoples and that the report spoke of many initiatives to improve their lot. He wondered whether other countries would also be asked to pay compensation and reparation for past errors. The process would then be never-ending.

25. Mr. THORNBERRY proposed the following wording: "The Committee appeals to the Government of Costa Rica to extend the scope of the apology it has made for past errors to Afro-Costa Ricans to include the indigenous peoples of Costa Rica."

26. Mr. HERNDL asked whether the new paragraph was really necessary.

27. The CHAIRMAN said it was a good thing that the Government of the State party had already tendered its apologies to one section of the population.

28. Mr. ABOUL-NASR said he had hoped that the apology would also be extended to the indigenous population, but, if other members of the Committee found his proposal unacceptable, he would withdraw it.

29. Mr. SHAHI said that he was in favour of the wording proposed by Mr. Thornberry.

30. Mr. YUTZIS said that, while a discussion of substance was important, he did not feel that criteria of that sort should be applied to a country like Costa Rica and he therefore advocated the retention of Mr. Valencia Rodríguez's text as it stood, without the additional paragraph.

31. Paragraph 13 bis was not adopted.

Paragraph 14

32. Mr. ABOUL-NASR asked whether a State was in a position to adopt a code of ethics for the media and whether it would not be more appropriate for paragraph 14 to advise the media themselves to adopt a code of ethics.

33. Mr. SHAHI said that the Committee was treating manifestations of racial discrimination from the media too leniently. The media did not have impunity and were bound by the same laws and regulations as everyone else and so the same punishments applied to them, yet all that was being required of them was that they should adopt a code governing their conduct.

34. The CHAIRMAN said that the question of punishment was covered by paragraph 10 and suggested that paragraph 14 should read: "The State party should consider the promotion of the adoption of a code of ethics."

35. Mr. THORNBERRY proposed that the word "support" should be replaced by the word "consider" and that the words "which addresses issues of hate speech" should be added at the end of the paragraph.

36. Mr. BOSSUYT said that he would prefer the word "encourage" rather than "support" and that paragraph 14 should refer to "alleged manifestations", as the Committee had been unable to check whether they actually existed.

37. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) said that, in his opinion, the wording proposed by Mr. Thornberry and amended by Mr. Bossuyt was appropriate. Paragraph 14 had been prompted by the contents of paragraphs 281 and 282 of the country report.

38. Paragraph 14, as amended, was adopted.

Paragraph 15

39. Mr. ABOUL-NASR asked whether the Nicaraguan immigrants belonged to a different race than Costa Ricans.

40. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) said that both Nicaraguans and Costa Ricans were mestizos and that discrimination in the case in point was based on national origin.

41. Mr. SICILIANOS proposed that the words "race, ethnic or" should therefore be deleted.

42. Mr. BOSSUYT drew attention to paragraph 234 of the report, which answered Mr. Aboul-Nasr's question. The Committee had learned that the situation of some 130,000 of those immigrants had been regularized and he therefore queried the word "clandestine".

43. Mr. LINDGREN ALVES and Mr. YUTZIS explained that the ethnic mix of mestizos could vary and hence there could be differences from one country to another. Paragraph 15 should therefore not be amended.

44. Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) said that paragraph 15 should be left unchanged. While a large number of undocumented Nicaraguan immigrants had benefited from an amnesty, another wave of migrants had followed. It was unlikely that they would be amnestied and, in the meantime, they were indeed suffering from discriminatory treatment.

45. The CHAIRMAN suggested that the word "clandestine" should be deleted so that paragraph 15 would refer to all immigrants.

46. Mr. PILLAI said that he wished to know why the word "Parliament" was used in paragraph 12 and the term "Legislative Assembly" in paragraph 15.

47. Mr. LINDGREN ALVES said that, in Latin-American countries, the official term was "Legislative Assembly", but reference was also made to "Parliament".

48. Paragraph 15, as amended, was adopted.

Paragraph 16

49. Mr. SICILIANOS proposed that the phrase "in particular with regard to Colombian nationals" should be added at the end of the second paragraph.

50. Paragraph 16, as amended, was adopted.

Paragraph 17

51. Mr. HERNDL said that paragraph 17 should highlight the fact that minorities and other ethnic groups had equal access to the courts de jure but not de facto.

52. After a discussion in which Mr. AMIR, Mr. THORNBERRY, Ms. JANUARY-BARDILL, Mr. SHAHI, Mr. RESHETOV, Mr. TANG Chengyuan, Mr. KJAERUM and Mr. VALENCIA RODRÍGUEZ (Country Rapporteur) participated, the CHAIRMAN suggested that the first sentence should be maintained as it stood and that the second sentence should read, "... to facilitate de facto equal access to the courts ...".

53. Paragraph 17, as amended, was adopted.

Paragraph 18

54. Paragraph 18 was adopted subject to minor drafting changes.

Paragraph 19

55. Mr. THORNBERRY proposed that the words "promoting the contents of" should be replaced by the words "disseminating the Convention".

56. After a discussion between Mr. KJAERUM and Mr. ABOUL-NASR, the CHAIRMAN suggested the following wording: "While noting that there is no regulation of the Internet in national legislation, the Committee encourages the State party to adopt legislation in conformity with the Convention and to continue disseminating and promoting the Convention ...".

57. Paragraph 19, as amended, was adopted.

Paragraphs 20 and 21

58. Paragraphs 20 and 21 were adopted.

Paragraph 22

59. The CHAIRMAN announced that the standard paragraph on the Durban Conference adopted the previous day would be inserted.

60. Paragraph 22, as amended, was adopted.

Paragraph 23

61. Paragraph 23 was adopted subject to a minor drafting change.

62. The draft concluding observations of the Committee concerning the seventh periodic report of Costa Rica as a whole, as amended, were adopted.

Draft concluding observations concerning the eighth to fifteenth periodic reports of Jamaica (CERD/C/60/Misc.35/Rev.3)

Paragraphs 1 to 3

63. Paragraphs 1 to 3 were adopted.

Paragraph 4

64. Mr. PILLAI proposed that the words "is undergoing" should be replaced by the words "has undertaken".

65. Paragraph 4, as amended, was adopted.

Paragraph 5

66. Mr. ABOUL-NASR proposed that, in the first sentence, the words "the State party" should be replaced by the words "any State party" so that it would not appear that the Committee's refusal to accept the assertion about the absence of racial discrimination applied to Jamaica only.

67. Mr. THORNBERRY suggested that the words "any State party" should be replaced by the words "States parties".

68. Mr. RESHETOV (Country Rapporteur) said that he preferred the words "any State party".

69. Mr. LINDGREN ALVES said that, if the Committee really wished to convey a strong message to the State party, the original wording of the sentence should be retained.

70. Mr. SICILIANOS said that the first sentence was somewhat too aggressive in tone and should be reworded. He also questioned the words "lack of awareness of available legal remedies" in the second sentence. Were appropriate legal remedies for racial discrimination available in the State party? The Committee had been informed by Jamaica that there was no need for such remedies.

71. Mr. RESHETOV (Country Rapporteur) said that he endorsed Mr. Sicilianos' comments on the first sentence. However, the second sentence should be retained. It would serve to remind the State party that perhaps the absence of complaints was due to a lack of awareness about legal remedies.

72. Mr. HERNDL said he agreed with Mr. Reshetov that the second sentence should be retained: he was sure that legal remedies did exist in the State party, but were not taken advantage of. He endorsed Mr. Sicilianos' comments on the first sentence and proposed the following wording: "The Committee reminds the State party that it has difficulty in accepting the mere assertion made by States parties as to the absence of racial discrimination". That was a strong, but not an aggressive statement.

73. Paragraph 5, as amended, was adopted.

Paragraph 6

74. Mr. PILLAI, replying to a comment by Mr. THORNBERRY, said that the first sentence referred to "legislative, administrative and other measures", while the end of the second sentence referred only to "such legislation". For the sake of consistency, he proposed that "such legislation" should be replaced by "such measures".

75. Mr. AMIR asked why the word "urges" had been used in the recommendation when the Committee had agreed that, in such recommendations, the word "recommends" would suffice.

76. Mr. RESHETOV (Country Rapporteur) said that article 4 of the Convention was peremptory. Any State party which derogated from it should be urged to take the necessary steps to ensure its implementation.

77. Paragraph 6, as amended, was adopted.

Paragraphs 7 and 8

78. Paragraphs 7 and 8 were adopted subject to minor drafting changes.

Paragraphs 9 and 10

79. Paragraphs 9 and 10 were adopted.

Paragraph 11

80. The CHAIRMAN said that the wording of paragraph 11 would be replaced by that of paragraph 23 of the concluding observations concerning Qatar's twelfth periodic report (CERD/C/60/Misc.28/Rev.3).

81. It was so decided.

Paragraph 12

82. Mr. HERNDL suggested that the words "accepting the optional declaration" should be replaced by the words "making the optional declaration".

83. Paragraph 12, as amended, was adopted.

Paragraph 13

84. The CHAIRMAN said that a reference to the relevant United Nations General Assembly resolution should be incorporated in paragraph 13, in line with the other concluding observations adopted by the Committee so far.

85. Paragraph 13 was adopted on that understanding.

Paragraph 14

86. Paragraph 14 was adopted.

sParagraph 15

87. The CHAIRMAN said that it was not customary to request that two periodic reports should be submitted together. He therefore suggested that paragraph 15 should be amended to read: "The Committee recommends that the next periodic report of the State party be an updating one that addresses all points raised in the present observations".

88. Mr. RESHETOV (Country Rapporteur) proposed that the word "all" should be replaced by the word "the".

89. Paragraph 15, as amended, was adopted.

90. The draft concluding observations concerning the eighth to fifteenth periodic reports of Jamaica, as a whole, as amended, were adopted.

Draft concluding observations concerning the fifteenth periodic report of Denmark (CERD/C/60/Misc.33/Rev.3)

Paragraphs 1 and 2

91. Paragraphs 1 and 2 were adopted.

Paragraph 3

92. The CHAIRMAN said that the words "recommendations by Denmark" should be qualified.

93. Mr. KJAERUM said that the recommendations had been made by the Inter-Ministerial Committee, but the Government had thus far made no recommendations to Parliament on the matter.

94. The CHAIRMAN suggested that the word "Denmark" should be replaced by the words "the Inter-Ministerial Committee".

95. Paragraph 3, as amended, was adopted.

Paragraph 4

96. Paragraph 4 was adopted.

Paragraph 5

97. Mr. ABOUL-NASR requested more information on the neo-Nazi association mentioned. He also expressed concern about the fact that, although the licence of the radio station owned by the association had been temporarily suspended, no steps had been taken to ban the association, in accordance with article 4 of the Convention.

98. Mr. RESHETOV said that the use of the term "neo-Nazi association" implied that such organizations were legal in Denmark. Surely that was not the case.

99. Ms. JANUARY-BARDILL (Country Rapporteur) said that the Committee had used precisely that term when requesting more information about the association in its concluding observations concerning Denmark's previous periodic report (CERD/C/304/Add.93). In reply, the State party had informed the Committee that, although its licence had been temporarily suspended, the radio station was still owned by the same association.

100. Mr. LINDGREN ALVES proposed that the Committee should note the progress made with regard to the radio station, but also recommend that the association should be disbanded. He further proposed that paragraph 5 should be moved to section C on "Concerns and recommendations".

101. Mr. KJAERUM said the association in question was in fact a real neo-Nazi organization. It had always been Denmark's policy not to ban such associations, but instead to take legal action against their policies.

102. Mr. AMIR said he agreed that it was not enough to welcome the temporary suspension of the radio station's licence. The Committee must encourage the Government to ban political associations and media that promoted neo-Nazi policies. He would welcome more information on the radio station. Could it broadcast abroad, for example?

103. Ms. JANUARY-BARDILL (Country Rapporteur) proposed that paragraph 5 should be amended to read: "The Committee takes note of the information on the temporary suspension of the licence of radio OASEN owned by a neo-Nazi association and recommends that the State party take decisive steps to ban the association."

104. Mr. THORNBERRY suggested that a reference to article 4 of the Convention might also be incorporated.

105. The CHAIRMAN said he took it that the Committee would like paragraph 5 to be moved to section C. When dealing with that section of the concluding observations, the Committee could reach agreement on a suitable text.

106. It was so decided.

Paragraph 6

107. Paragraph 6 was adopted.

Paragraphs 7 and 8

108. Paragraphs 7 and 8 were adopted subject to minor drafting changes.

Paragraph 9

109. Paragraph 9 was adopted.

Paragraph 10

110. Mr. RESHETOV asked whether it was clear which rights of immigrants might be violated.

111. Ms. JANUARY-BARDILL (Country Rapporteur), replying to Mr. Reshetov, said that the Committee was concerned about whether the local authorities would exercise the same care as the Government in ensuring the integration of aliens.

112. Mr. BOSSUYT said that freedom of movement might also be jeopardized.

113. Mr. PILLAI said that the exact title of the act should be used, namely, "Act on Integration of Aliens in Denmark".

114. Paragraph 10, as amended, was adopted.

Paragraph 11

115. Mr. THORNBERRY said he was not sure that the words "in pursuance of" in the fourth line were appropriate.

116. Ms. JANUARY-BARDILL (Country Rapporteur) suggested that those words should be replaced by the words "while protecting".

117. Mr. SICILIANOS proposed that the words following "monitor" should be replaced by the words "possible violations of articles 2 and 4 of the Convention while exercising the right to freedom of expression".

118. Mr. THORNBERRY suggested that the words "in pursuance of the right to freedom of expression" should be deleted.

119. Mr. AMIR said that the phrase "the key role that politicians and political parties can play" should be reworded to read: "the key role that all politicians and political parties should play". Otherwise, it did not sound like an obligation.

120. Ms. JANUARY-BARDILL (Country Rapporteur) said that it was not necessary to insert the word "all", but had no objection to the replacement of the word "can" by the word "should".

121. Mr. BOSSUYT said that the Committee could not rewrite paragraph 115 of the Durban Programme of Action, which used the words "can play".

122. Mr. LINDGREN ALVES said that that wording had been discussed at length in Durban and consensus had been possible only by using the word "can" instead of the word "should".

123. The CHAIRMAN proposed that the Committee should go beyond the Durban text by merging the third and fourth sentences, which would then read: "In this regard, the Committee invites the State party to take particular note of paragraphs 85 and 115 of the Durban Declaration and Programme of Action and is of the opinion that political parties should be encouraged to take steps to promote solidarity ...".

124. Mr. BOSSUYT said that it was not clear from the wording which paragraph pertained to the Durban Declaration and which to the Programme of Action. That needed to be checked.

125. Mr. SICILIANOS said paragraph 85 was wrong in both cases; paragraph 115 was from the Programme of Action.

126. Mr. RESHETOV proposed that the third sentence, after the words "Programme of Action", should read: "which highlight the key role of politicians and political parties in combating racism ...". That would change the connotation slightly without altering the wording of the relevant Durban paragraph.

127. Mr. AMIR and Ms. JANUARY-BARDILL (Country Rapporteur) said that they endorsed Mr. Reshetov's proposal.

128. Paragraph 11, as amended, was adopted.

Paragraph 12

129. Mr. THORNBERRY said that the word "well-intended" should read "well-intentioned". He also suggested that, in order to sound a more positive note, the words "the prohibition of mother tongue use" should be replaced by a reference to the provision of classes in the Danish language.

130. Mr. HERNDL said that the Danish delegation had admitted that foreign children were not allowed to use their own language, but were forced to use Danish, the logic being that that would help them to become integrated into Danish society.

131. Ms. JANUARY-BARDILL (Country Rapporteur) said that, although the goal of not allowing children to speak other languages in school was better integration, the effect was discriminatory.

132. Mr. THORNBERRY said that he did not think that the Committee should support such a proposition.

133. Mr. HERNDL said that he agreed with Mr. Thornberry.

134. The CHAIRMAN suggested that the word "well-intentioned" should be deleted.

135. Mr. THORNBERRY said that the deletion of that word would make no difference. Such policies did not "lead to" indirect discrimination, as stated in the fifth line; they were indirect discrimination.

136. The CHAIRMAN suggested that the phrase "the Committee is concerned that these policies and practices constitute indirect discrimination against minorities and refugees" should be added after the words "in order to facilitate better integration".

137. Mr. BOSSUYT said that he did not see why children should not be asked to speak one language in class. Danish teachers could hardly be expected to speak the languages of all the minority children. There had to be agreement on which language to use and it seemed perfectly logical that, in Denmark, that language was Danish.

138. Mr. KJAERUM, speaking on a point of clarification, said that day-care centres were concerned, not schools.

139. Mr. HERNDL, replying to Mr. Bossuyt, said that children were not allowed to use their mother tongues not only in class, but even among themselves during breaks.

140. The CHAIRMAN suggested that the words "in some of these schools" should be replaced by the words "in some of these institutions" to take Mr. Kjaerum's clarification into account.

141. Mr. PILLAI proposed that the first sentence should be amended to: "Policies and practices such as the housing dispersal policy, the quota system of admitting a defined percentage of minority children to certain crèches and nurseries and the reports on the prohibition of mother tongue use in some of these institutions, though aimed at facilitating better integration, may lead to indirect discrimination against minorities and refugees."

142. Mr. LINDGREN ALVES, supported by Mr. SICILIANOS, said that he was in favour of the deletion of the paragraph.

143. Ms. JANUARY-BARDILL (Country Rapporteur) said that the Committee must make it clear that it was not happy about the situation, that it would like further information to be included in the next periodic report and that such policies must be reviewed. In her view, the paragraph should be retained. She could accept the proposal by Mr. Pillai.

144. Mr. SICILIANOS said that he endorsed the first part of Mr. Pillai's proposal, but suggested that the Committee should merely ask for more information. It was not necessary to call for a review of such policies.

145. The CHAIRMAN said that the second sentence could then read: "The Committee requests more information on the subject in the next periodic report."

146. Paragraph 12, as amended, was adopted.

Paragraph 13

147. Mr. PILLAI said that the reference to bodies which served the needs of minority groups was too restricted.

148. Ms. JANUARY-BARDILL (Country Rapporteur) suggested that the words "promoted human rights and" should be added before the words "served the needs of minority groups" to take Mr. Pillai's point into account.

149. Paragraph 13, as amended, was adopted.

Paragraph 14

150. Paragraph 14 was adopted.

Paragraph 15

151. Mr. SICILIANOS suggested that, in the sixth line, the words "minority groups" should be replaced by the words "groups of immigrants".

152. Mr. AMIR said that paragraph 15 should also make it clear that persons from minorities should not be the first to be fired in periods of recession.

153. Mr. BOSSUYT suggested that, in the last sentence, the words "have obtained" should be replaced by the words "are entitled to". After all, the condition for obtaining a work permit was to have an offer of employment.

The meeting rose at 6.05 p.m.